STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JOHN THOMAS BROWN and CATHERINE ANNE BROWN, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

GAYLE LEE BROWN,

Respondent-Appellant,

and

CHRISTOPHER HUGH WALTON,

Respondent.

UNPUBLISHED
January 27, 2004

No. 246959
Wayne Circuit Court
Family Division
LC No. 02-411371

Before: Owens, P.J., and Schuette and Borello, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(*ii*), (g) and (j).[1] We affirm.

This case came to the attention of the Family Independence Agency on July 3, 2002, when the infant sibling of the minor children, Joshua, presented to the Oakwood Hospital emergency room with severe brain injuries characteristic of shaken baby syndrome. The child was unresponsive with dilated, staring eyes. He was airlifted to the University of Michigan Hospital where he died three days later. The infant's father, also the father of Catherine, pleaded guilty to second-degree murder in the death of Joshua and is incarcerated.

[1] The trial court cited MCL 712A.19b(3)(b)(*i*) (parent caused abuse) but used language closely paralleling that of MCL 712A.19b(3)(b)(*ii*) (parent who had opportunity to do so failed to prevent abuse). Therefore, we conclude that respondent-appellant's parental rights were actually terminated under subsection (b)(*ii*) rather than under subsection (b)(*i*).

The medical testimony indicated that the injury to Joshua occurred at least twenty-four to forty-eight hours before he presented at the hospital. Moreover, two of Joshua's treating doctors testified that it would have been immediately apparent after the injury that something was very wrong. Dr. Garton of the University of Michigan testified that Joshua would have been rendered immediately unconscious and would have been unlikely to regain consciousness, and Dr. Bertha of Oakwood Hospital testified that he would have immediately displayed pupil dilation and staring and would have been unable to suck immediately or shortly after the injury.

Respondent-appellant testified that she received a call from Christopher Walton on July 1, 2002, reporting that the minor child John had attempted to choke Joshua. When respondent-appellant returned home from work about 9:40 p.m., Joshua was asleep and showed no sign of injury. He was not awakened for his last feeding, which normally occurred around 11:00 p.m to 1:00 a.m., and upon waking the next morning would not suck. Throughout the day of July 2, 2002, Joshua did not eat. Respondent appellant testified that in the afternoon or early evening of July 2, 2002, Joshua looked unwell and his movements slowed. Respondent-appellant brought him to the emergency room the following day, July 3, 2002, at approximately 1:00 p.m.

We conclude that the trial court appropriately terminated respondent-appellant's parental rights pursuant to MCL 712A.19b(3)(j). The evidence indicated medical neglect of Joshua of an extremely serious nature. Although Joshua was last reported to have been fed about 9:00 p.m. on July 1, 2002, respondent-appellant did not seek medical care until about 1:00 p.m. on July 3, some forty hours later. Joshua was a premature baby, not yet three months old, and weighing approximately six pounds when brought to the emergency room. Dr. Bertha opined that he would have died within several hours if treatment had not been sought. The medical testimony further indicates that it would have been quite apparent that something was wrong with the infant. Respondent-appellant's reliance on the testimony of ophthalmologist Jonathon Trobe that shaking injuries would not be immediately apparent is unpersuasive where respondent-appellant's own testimony indicated that the child would not suck beginning in the morning of July 2, 2002. We believe that respondent-appellant's profound lack of judgment or lack of awareness concerning Joshua indicates a reasonable likelihood that the minor children will be harmed if returned to her care. MCL 712A.19b(3)(j). Various cases recognize that "[h]ow a parent treats one child is certainly probative of how that parent may treat other children." *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001); *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). The concern for the welfare of the other children, which is raised by respondent-appellant's medical neglect of Joshua, is only increased by the fact that Catherine is only three years old, and John, now seven, is autistic. We conclude that the trial court did not clearly err by finding by clear and convincing evidence that there was a reasonable likelihood that the children would be harmed if returned to respondent-appellant.

The trial court also did not clearly err by concluding that termination was not contrary to the best interests of the children. MCL 712A.19b(5). The record indicates that John is in the custody of his father and has made great strides in his ability to communicate. We find no evidence indicating that termination is contrary to the best interests of Catherine.

Respondent-appellant also argues that the evidence did not support termination under MCL 712A.19b(3)(b)(*ii*) or (g). We need not reach the question of these alternative grounds for termination because termination need be supported by only one statutory subsection. *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999).

Affirmed.

/s/ Donald S. Owens
/s/ Bill Schuette
/s/ Stephen L. Borrello